

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3605 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.M.KAPADIA

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL TEXTILE CORPORATION (GUJARAT) LIMITED

Versus

UNION OF INDIA

Appearance:

MR DEVANG S NANAVATI for NANAVATI & NANAVATI for Petitioner
MR ASIM PANDYA for respondents.

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.M.KAPADIA

Date of decision: 08/09/1999

ORAL JUDGEMENT (Per B.C. Patel, J.):

1. Rule. Mr. Asim Pandya, learned advocate, waives
service of rule. At the request of learned advocates for
the parties, the matter is taken up for final disposal
today.

2. National Textile Corporation (Gujarat) Limited,

Ahmedabad, petitioner herein, is declared as a sick industrial unit under the provisions contained in Sick Industrial Companies (Special Provisions) Act, 1985 ('the Act' for short hereinafter). It is in these circumstances, the petitioner has prayed that the respondents be directed not to recover an amount of Rs.4,48,000/- pursuant to the order at Annexure 'B' from the petitioner during the period the petitioner continues to be a sick unit under the provisions of the Act.

3. New Manekchowk Textile Mills Limited is a unit of the National Textile Corporation (Gujarat) Limited, the petitioner herein. It is not disputed that the said unit is thus a sick unit. Vide Annexure 'B', the Customs, Excise and Gold (Control) Appellate Tribunal, Mumbai ('CEGAT' for short) dismissed the appeal by observing that "therefore even if this appeal was to be restored, for the above reason, it has to be dismissed. We, therefore, do not feel it is necessary to restore the appeal for the reasons indicated above only and dismiss the appeal for want of permission from Cabinet Committee of Secretaries for pursuing this appeal." It is contended before this Court that in view of the dismissal of the appeal, the amount is required to be paid as per the order dated 30.5.1995 passed by the Assistant Collector, Central Excise, Ahmedabad.

4. It is submitted that as pointed out by Apex Court in the case of Sangfroid Remedies Limited v. Union of India, 1998 (103) ELT 5 (SC), the petitioner should be protected. The Apex Court in para 6 of the judgment has pointed out as under:

"Further, there is one other factor in this case and that is the appellant has since been declared as a sick industry by an order dated 23rd April, 1998 by the Board for Industrial and Financial Reconstruction."

The Apex Court along with other reasons, considered this as one of the reasons for holding that direction to the appellant to pay the excise duty as determined as a condition for hearing the appeal, is not sustainable.

5. In the case of Himadri Textile Mills (A unit of N.T.C.(Gujarat) Limited v. Assistant Commissioner of Provident Fund, Ahmedabad and another, a Division Bench of this Court (Coram: B.N. Kirpal, C.J. (as His Lordship then was) & H.L. Gokhale, J.) by an order dated 29.6.1995 considered the decision of the Apex Court in the case of Maharashtra Tubes Limited v. State

Industrial and Investment Corporation of Maharashtra Limited and another, (1993) 2 SCC 144 as well as Gram Panchayat v. Shree Vallabh Glass Works Limited, AIR 1990 SC 1017, and held that the provisions of the Act were applicable to Himadri Textile Mills and considering this fact, stayed the recovery of the amount from the appellant.

6. Mr. Pandya, learned advocate appearing for the respondents could not point out any material so as to justify the say of the respondents. It is in these circumstances, we allow the petition and hold that the petitioner shall continue to get protection under Section 22 of the Act till the unit enjoys that protection. It will be open for the respondents to recover the amount if the applicant loses the status of a sick unit after following the procedure laid down under the Act.

7. Special Civil Application stands allowed accordingly. Rule is made absolute to the aforesaid extent. No order as to costs.

(karan)